

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

DON'T DISMYABILITIES, INC.,
Plaintiff,

v.

THE CITY OF DALLAS
Defendant.

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CIVIL ACTION NO. 3:17-CV-3026-L

**DISABILITY ACCOMMODATIONS
DISCRIMINATION COMPLAINT**

ECF

***MEMORANDUM IN SUPPORT OF MOTION FOR
A TEMPORARY RESTRAINING ORDER***

Don't Dismyabilities, Inc. ("DDMA") moves this Court to enter a temporary restraining order and/or preliminary injunction in accordance with Fed. R. Civ. P. 65 against the City of Dallas ("Dallas"). DDMA seeks a temporary restraining order directing Dallas to comply with the Americans with Disabilities Act,¹ the Rehabilitation Act of 1973, as amended², and the Texas Human Resources Code³ by granting DDMA injunctive relief against Dallas to compel it to construct facilities in compliance with the Americans with Disabilities Act Accessibility Guidelines⁴ and the Texas Accessibility Standards.⁵ In support of this Motion, DDMA would show:

¹42 U.S.C. § 12101 et seq., (the "ADA").

²29 U.S.C. § 794 and § 794a (the "Rehabilitation Act").

³TEX. HUM. RES. CODE § 121.001 et seq. (the "THRC").

⁴28 C.F.R. Part 36, Appendix A (the "ADAAG"). *See also* the Uniform Federal Accessibility Standards (UFAS) (appendix A to 41 CFR Part 101-19.6). In the present case both standards are exactly the same and for brevity only the ADAAG will be cited hereinafter.

⁵16 TEX. AMIN. CODE, § 68 (1994) Tex. Dept. Lic. & Reg. (the "TAS"). The TAS sections are exactly the same as the ADAAG sections cited herein and were copied verbatim from the ADAAG as applied to the architectural barriers described in this pleading.

FACTUAL BACKGROUND

1. DDMA is a not for profit Texas corporation organized exclusively for charitable, religious, educational, and scientific purposes. The goal of DDMA is to protect the legal rights of persons with mobility impairment disabilities. DDMA seeks the removal of architectural barriers from government entities, places of public accommodation, commercial facilities, along with employment and living environments. DDMA attempts to resolve failures to accommodate and failing voluntary compliance, to force the removal of architectural barriers that are structural in nature through litigation and injunctive relief.

2. Each individual member of DDMA is a resident of the State of Texas and an individual with a disability within the meaning of the ADA 3(2), 42 U.S.C. 12102(2), in that each individual member has a physical impairment that substantially limits one or more of his/her major life activities, and requires the use of a wheelchair or other assistance device for purposes of mobility.

3. Defendant, the City of Dallas (“Dallas”) is a Texas municipality and a “populous home-rule municipality” as that term is defined in Chapter 22 of the Texas Transportation Code. Dallas conducts programs or activities receiving Federal financial assistance as defined by the Rehabilitation Act,⁶ and is a public entity as defined by Title II of the ADA and the TABA.

4. Dallas owns a utility easement between North Edgefield Ave and West Canterbury Court streets in the City of Dallas as shown on the survey plat attached hereto as Exhibit A. At sometime in the past, the easement included a pedestrian pathway with steps constructed in the 1920's between the two streets known as “Kessler Steps.” The walkway was not maintained, many steps broke away and slid down the escarpment, and the entire easement became

⁶29 U.S.C. §794.

overgrown by bamboo and underbrush.

5. Due to the condition of the Kessler Steps, the City of Dallas Risk Management Department closed the pathway holding that it was not adequately safe for use by the general public. In September 2017 the Dallas City Council approved the construction of The Kessler Steps Pathway Improvement Plan (“Pathway Plan”) at a cost of more than \$290,000. A copy of the pathway plan is attached as Exhibit B.

6. However, the Pathway Plan approved by the City Council does not comply with either state or federal accessibility standards – it is comprised of a series of stairs, with no ramps or other method for anyone using a wheelchair to access the facility. The plan does not include any accessible route as defined by the Americans with Disabilities Act Accessibility Guidelines or the Texas Accessibility Standards.⁷

7. The TABA requires that all alterations to covered facilities must comply with the TAS.⁸ It further requires that when a public entity property owner engages in new construction or alters a covered facility it must submit the construction plans to TDLR for review⁹ and the plans must be submitted to a registered accessibility specialist (“RAS”) or contract provider for review to insure the plans meet the TAS.¹⁰

⁷ADAAG/TAS §402.2 Components. Accessible routes shall consist of one or more of the following components: walking surfaces with a running slope not steeper than 1:20, doorways, ramps, curb ramps excluding the flared sides, elevators, and platform lifts. All components of an accessible route shall comply with the applicable requirements of Chapter 4.

⁸*Id.* at §469.001 and §469.003(a)(4); *see also* 16 TEX. ADMIN. CODE, §68.20. Buildings and Facilities Subject to Compliance. (a) A building or facility used by a public entity is subject to compliance with the Texas Accessibility Standards (hereinafter “TAS”) if it is constructed, renovated, or modified, in whole or in part, on or after January 1, 1970, using funds from the state or a county, municipality, or other political subdivision of the state.

⁹*Id.* at §469.101; 16 Tex. Admin. Code §68.50.

¹⁰16 Tex. Admin. Code §68.50. Submission of Construction Documents. (a) All plans and specifications for the construction of or alteration to a building or facility subject to §469.101 of the Act must be submitted to a registered accessibility specialist or contract provider for review if the estimated construction cost is at least \$50,000. All plans may be submitted in electronic format.

8. The Kessler Steps Project has been registered with TDLR,¹¹ however, the undersigned has not been able to determine if the construction documents have been filed within 20 days as is required by law. Listed as the registered accessibility specialist responsible for plan review is RAS 309, Fred Dean Shinault, who states to the undersigned attorney that he is unfamiliar with The Kessler Steps project, had never seen the Project Registration or Pathway Plan before the undersigned sent it to him, and has not approved the plan for construction.

9. Attached as Exhibit E is the affidavit of Fred D. Cawyer, AIA, RAS, NCARB, APA, who states that he is familiar with The Kessler Steps site, has reviewed the Pathway Plan, and neither the Pathway Plan nor the current construction meets ADAAG or the TAS. The Kessler Steps project is not accessible to or useable by individuals with disabilities.

10. Nonetheless, Dallas has begun construction on The Kessler Steps Pathway Plan, as shown by the photographs attached as Exhibit C, that has not been approved by a RAS and complies with neither state nor federal accessibility standards.

ARGUMENT AND AUTHORITIES

A temporary restraining order is an extraordinary remedy that should not be granted unless the movant first proves the elements required generally for injunctive relief: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable harm if the injunction is not granted; (3) that the threatened injury to the movant outweighs any harm to the nonmovant that may result from the injunction; and (4) that the injunction will not undermine the public interest.¹² The grant of interim injunctive relief is “an extraordinary remedy involving the

¹¹See Exhibit D – The Kessler Steps project registration page.

¹²See *Roho, Inc. v. Marquis*, 902 F.2d 356, 358 (5th Cir. 1990); citing *Allied Mktg. Group, Inc. v. CDL Mktg., Inc.*, 878 F.2d 806, 809 (5th Cir.1989); *Mississippi Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1985).

exercise of a very far-reaching power, which is to be applied ‘only in [the] limited circumstances’ which clearly demand it.”¹³

1. *The Likelihood that Plaintiff will Prevail on the Merits.* The ADA expressly requires that “(e)ach facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.”¹⁴ Rehabilitation Act regulations require that recipients of federal financial assistance “shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12213) including the Department’s ADA regulations (49 CFR parts 37 and 38), the regulations of the Department of Justice implementing titles II and III of the ADA (28 CFR parts 35 and 36).”¹⁵

Under the TABA, a “building or facility used by a public entity is subject to compliance with the Texas Accessibility Standards (hereinafter “TAS”) if it is constructed, renovated, or modified, in whole or in part, on or after January 1, 1970, using funds from the state or a county, municipality, or other political subdivision of the state.”¹⁶ A public entity may not, in determining the site or location of a facility, make selections that have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination.¹⁷

¹³*Direx Isreal, Ltd. v. Breakthrough Medical Corp.*, 952 F.2d 802, 811 (4th Cir. 1992), citing *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 800 (3d Cir. 1989).

¹⁴28 CFR §35.151(a)(1).

¹⁵49 C.F.R. §27.19(a).

¹⁶16 TEX. AMIN. CODE, §68.20(a); *see also* TEX. GOV’T CODE, §469.001 and §469.003(a) “The standards adopted under this chapter apply to: (1)a building or facility used by the public that is constructed, renovated, or modified, in whole or in part, on or after January 1, 1970, using funds from the state or a county, municipality, or other political subdivision of the state”.

¹⁷28 CFR §35.130(B)(4)(i).

The affidavits and evidence on file show that the plans and specification do not meet federal or state accessibility standards and that Dallas has not filed the pathway construction plans with TDLR as required by state law.

2. *Significant Threat of Irreparable Injury.* Dallas has begun construction on the Kessler Steps pedestrian pathway that has no accessible route for individuals with disabilities that use wheelchairs. If the construction is allowed to proceed without any review for compliance with any accessibility standards, it will be a completed project that complies with neither state or federal law. DDMA's members will face a new Dallas facility that is completely inaccessible to or useable by them. They will suffer irreparable injury.

3. *The Threatened Injury to the Movant Outweighs Any Harm to the Nonmovant.*

Granting this temporary restraining order does no more than require Dallas to follow existing state and federal law. If the Kessler Steps project is allowed to continue, it is subject to injunctive relief that will require the entire project to be torn out and reconstructed at a great additional cost to the citizens of Dallas. There is simply no harm to Dallas by requiring them to construct a pathway that complies with state and federal law and that is accessible to and useable by individuals with disabilities.

4. *The Injunction Will Not Undermine the Public Interest.* There is no public interest that will be disserved by granting the restraining order. All the requested relief requires is that Dallas follow existing law.

Wherefore, Plaintiff prays that this Court grant a Temporary Restraining Order and after hearing a preliminary injunction requiring require that Dallas develop plans for an accessible pathway, have those plans reviewed by a RAS for compliance with TAS, and file the project construction documents with TDLR as required by law.

Dated: November 1, 2017

Respectfully submitted,

s/Kenneth Carden

KENNETH D. CARDEN

Bar Card No. 03787300

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Dallas, Texas 75215

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Fax 903.598.7950

francisjkey@gmail.com

**Attorneys for Don't
Disabilities, Inc.**

CERTIFICATE OF SERVICE

This document was served on November 1, 2017 to the

City Of Dallas Attorney's Office

1500 Marilla Street, Suite 7dn

Dallas, TX 75201

by facsimile transmission to (214) 670-0622.

/s/Kenneth Carden

Being a tract of land situated in the William Myers Survey, Abstract No. 880 in the City of Dallas, Texas and also being part of the FIRST INSTALLMENT OF KESSLER PARK, an addition to the City of Dallas, Texas according to the map thereof recorded in Volume 3, Page 147, Map Records, Dallas County, Texas and being more particularly described as follows:

Beginning at a 1/2 inch iron rod found at the most Easterly corner of Lot 12, Block 12/3799 of the said FIRST INSTALLMENT OF KESSLER PARK, in the Northwest line of Canterbury Court;

THENCE North 45 degrees 00 minutes 00 seconds West, along the Northeast line of said Lot 12, a distance of 117.72 feet to a yellow capped 1/2 inch iron rod found for angle point;

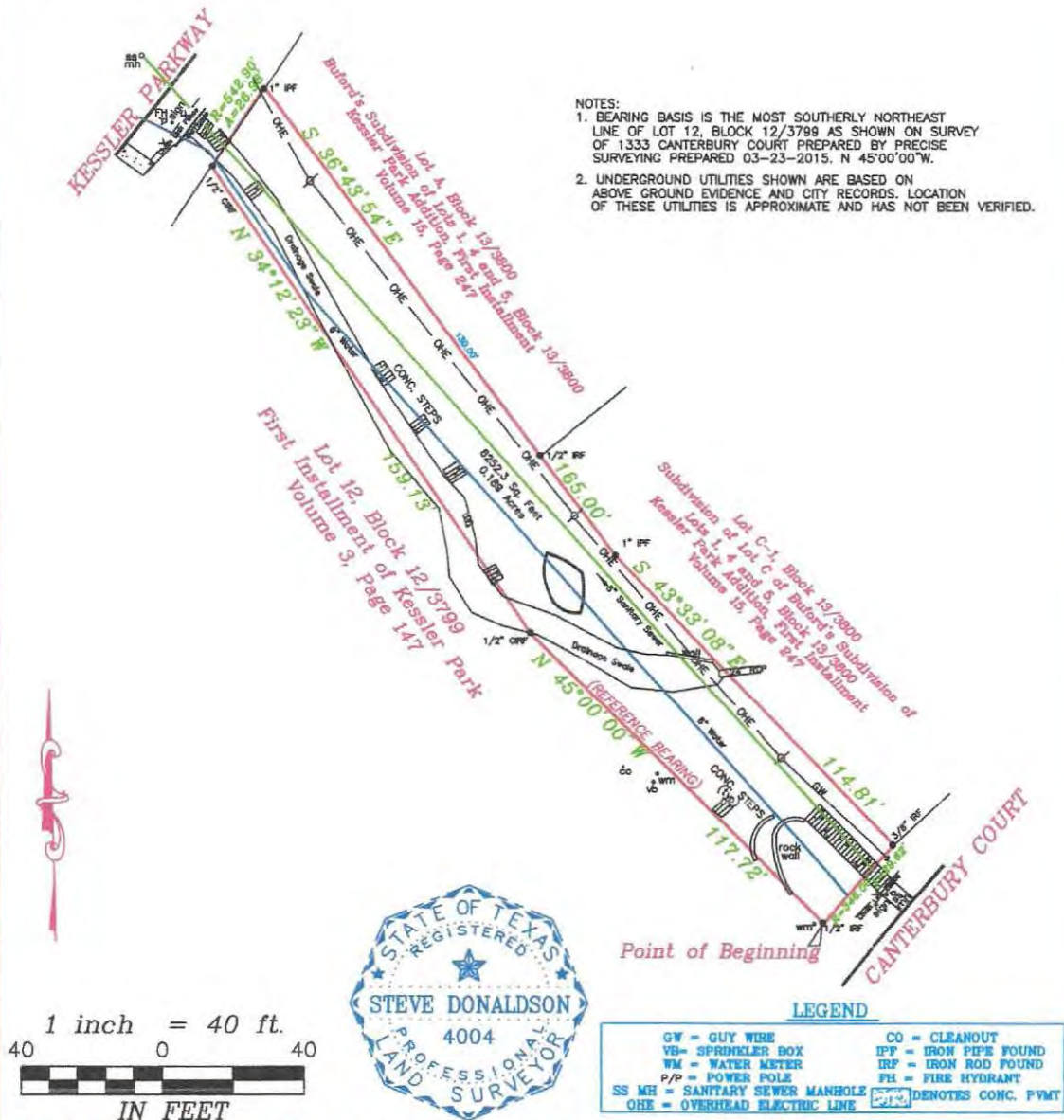
THENCE North 34 degrees 12 minutes 23 seconds West, remaining along said Lot 12 a distance of 159.13 feet to a yellow capped 1/2 inch iron rod found in the curving Southerly line of Kessler Parkway (Edgefield Ave.) said curve having a central angle of 02 degrees 50 minutes 49 seconds, a radius of 542.90 feet and a chord which bears North 33 degrees 10 minutes 13 seconds and a chord length of 26.97 feet;

THENCE along said curve to the right an arc distance of 26.98 feet to a 1 inch iron pipe found at the most Westerly corner of Lot A, Block 13/3800 of BUFORD'S SUBDIVISION OF LOTS 1, 4 AND 5, BLOCK 13/3800, KESSLER PARK ADDITION, FIRST INSTALLMENT as recorded in Volume 15, Page 247, Map Records, Dallas County, Texas;

THENCE South 36 degrees 43 minutes 54 seconds East along the Southwest line of said Lot A, at 130.00 feet passing a 1/2 inch iron rod found at the South corner of said Lot A, same being the Northwest corner of Lot C-1, Block 13/3800 of the SUBDIVISION OF LOT C OF BUFORD'S SUBDIVISION OF LOTS 1, 4 AND 5, BLOCK 13/3800, KESSLER PARK ADDITION, FIRST INSTALLMENT as recorded in Volume 17, Page 393, Map Records, Dallas County, Texas, in all a total distance of 165.00 feet to a 1 inch pipe found for an angle point;

THENCE South 43 degrees 33 minutes 08 seconds East, remaining along said Lot C-1, a distance of 114.81 feet to a 3/8 inch iron rod found in the curving Northwest line of Canterbury Court;

THENCE along said curve to the left having a central angle of 04 degrees 54 minutes 54 seconds, a radius of 346.00 feet, a chord which bears South 42 degrees 05 minutes 19 seconds West, a chord length of 29.61 feet, an arc distance of 29.62 feet to the PLACE OF BEGINNING and containing 8252.3 square feet or 0.189 acres of calculated land.



I, Steve Donaldson, Registered Professional Land Surveyor No. 4004, do hereby certify that the plat shown hereon was prepared from an actual survey made on the ground under my supervision and conforms to the Texas Board of Professional Land Surveying minimum standards effective August 28, 2013; the size, location and types of improvements are shown with setback dimensions where applicable. There are no apparent visible encroachments, conflicts or protrusions except as shown. All easements shown are per the reference plat unless noted otherwise. This plat was prepared specifically for the real estate transaction referenced below. The undersigned assumes no responsibility for any other or subsequent use.

By: Steve Donaldson
Steve Donaldson, Registered Professional Land Surveyor No. 4004

Date: 02-19-16

BEARINGS SHOWN ARE CALCULATED FROM FIELD OBSERVATIONS AND ARE BASED ON THE REFERENCED PLAT UNLESS NOTED OTHERWISE

CARMAN-DONALDSON SURVEYING
206 SWEETGUM DRIVE
MURPHY, TEXAS 75094
214-878-8774 FAX 972-516-8935



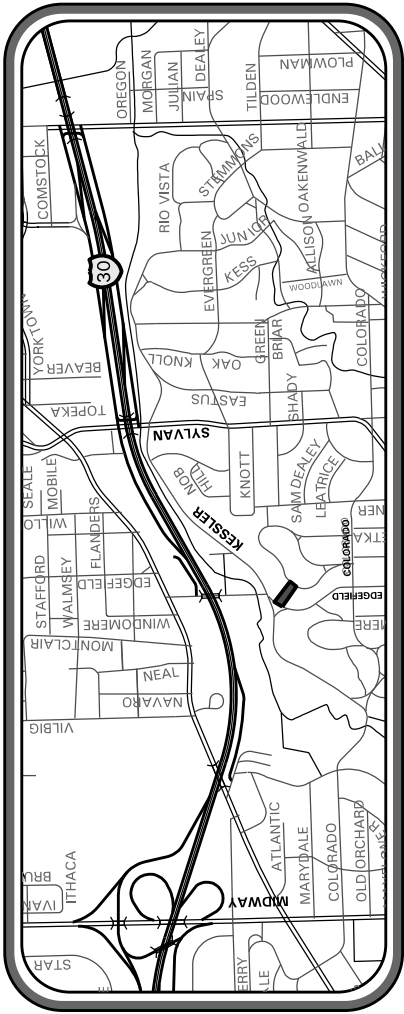
Dallas Park & Recreation

1500 MARILLA STREET
ROOM 6-FS
DALLAS, TEXAS 75201



Canterbury / Edgefield Pathway Improvement

LOCATION MAP -
NOT TO SCALE



RECOMMENDED FOR APPROVAL:

Date _____, _____, _____ Volume _____ Page _____

RECOMMENDED FOR APPROVAL:

Date _____, _____, _____ Volume _____ Page _____

PARK AND RECREATION BOARD APPROVAL:

Date _____, _____, _____ Volume _____ Page _____

GENERAL CONSTRUCTION NOTES

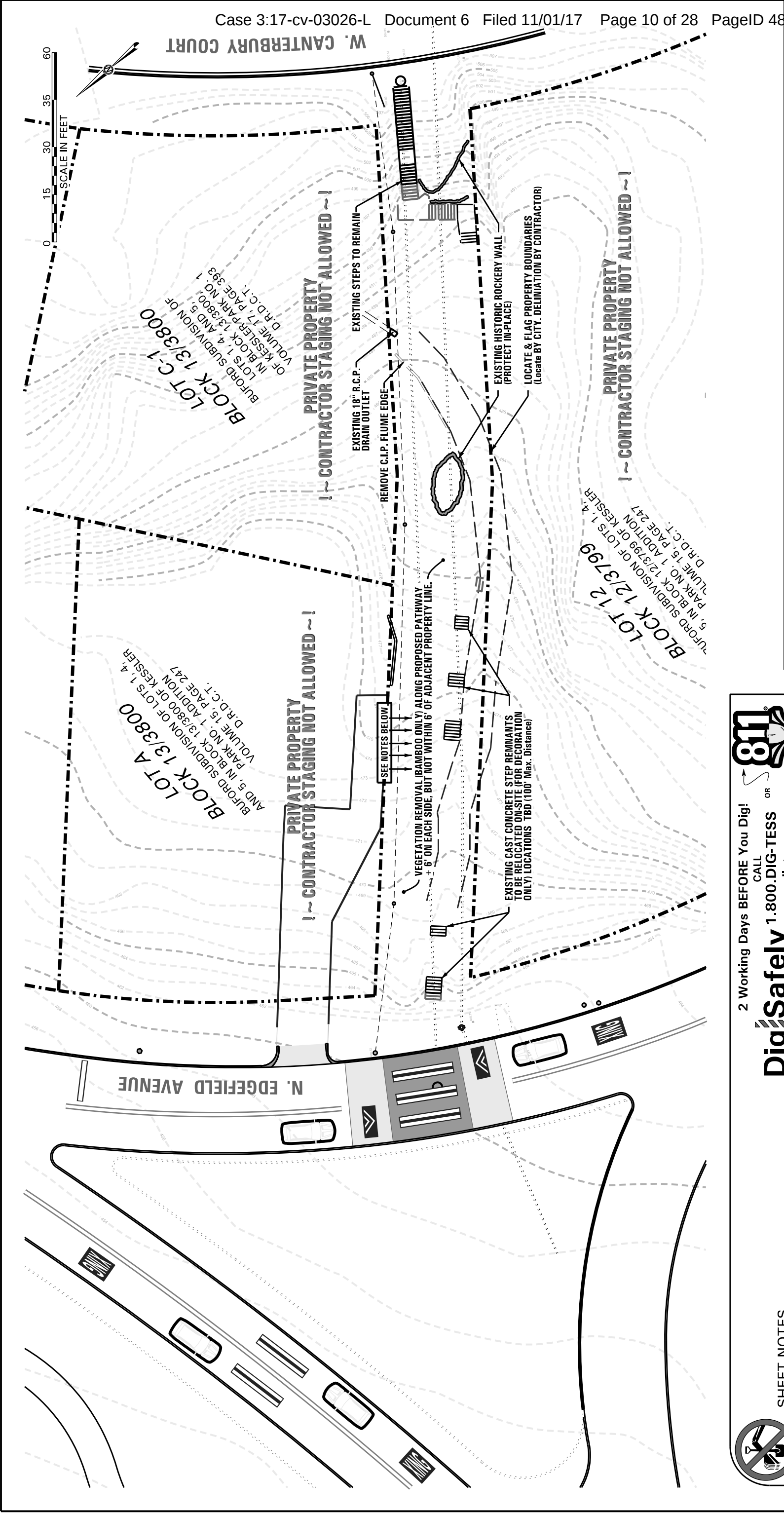
1. THE CITY OF DALLAS "CITY SPECIFICATIONS" IS MADE UP OF THE CURRENT VERSIONS OF THE (a) STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION FOR NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS (NCTCOG), (b) CITY OF DALLAS SPECIAL PROVISIONS WHICH MODIFY THE STANDARD SPECIFICATIONS AND (c) CITY OF DALLAS STANDARD CONSTRUCTION PARK DETAILS (CALLED STANDARD DETAILS). THE "CITY SPECIFICATIONS" SHALL BE MADE A PART OF THESE CONSTRUCTION PLANS AND ARE APPLICABLE TO CONSTRUCTION INSPECTED BY THE PUBLIC WORKS INSPECTORS.
2. IN THE EVENT AN ITEM IS NOT COVERED IN THE "CITY SPECIFICATION" OR "TECHNICAL SPECIFICATION" THE CONTRACTOR SHALL NOTIFY THE CITY AND THE CITY APPROVE ANY ADDITIONS OR MODIFICATIONS TO THE SPECIFICATIONS.
3. ALL WASTE MATERIAL AND/OR EXCESS EXCAVATION NOT USED AS PART OF THE WORK SHALL BE REMOVED FROM THE JOB SITE AND DISPOSED OF AT ACCEPTABLE LOCATIONS IN ACCORDANCE WITH ALL LOCAL STATE AND FEDERAL REGULATIONS.
4. THE CONTRACTOR SHALL BE REQUIRED, AT ALL TIMES, DURING THE CONSTRUCTION TO PROVIDE SIGNS, BARRICADES, AND OTHER SAFETY DEVICES (INCLUDING TEMPORARY SAFETY FENCING AROUND THE JOB SITE) IN ORDER TO PROTECT THE PUBLIC SAFETY AND HEALTH UNTIL ALL OF THE WORK HAS BEEN COMPLETED AND ACCEPTED.
5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATING ALL UTILITIES, INCLUDING THE FRANCHISE UTILITIES, AND UNDERGROUND STRUCTURES WHETHER OR NOT THEY ARE SHOWN ON THE PLANS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL DAMAGE TO THESE EXISTING UTILITIES OR STRUCTURES CAUSED BY HIS FORCES AND SHALL REPAIR ANY DAMAGE TO THEM CAUSED DURING THIS WORK AT NO COST TO THE CITY.
6. THE CONTRACTOR IS RESPONSIBLE FOR PROTECTION OF ALL EXISTING FACILITIES IN AND AROUND THE PROJECT AREA. THESE INCLUDE TREES, PLANTINGS, CONCRETE PAVING, BENCHES, SIGNS AND OTHER FACILITIES FOUND ON THE SITE. THE CONTRACTOR SHALL REPAIR OR REPLACE, AT NO COST TO THE CITY, ANY FACILITIES DAMAGED DURING CONSTRUCTION OF THESE IMPROVEMENTS.
7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR CARE OF ALL WATER DURING CONSTRUCTION. ALL PERMANENT WORK SHALL BE CONSTRUCTED IN AREAS FREE FROM WATER. THE CONTRACTOR SHALL CONSTRUCT AND MAINTAIN ALL DITCHES, LEVEES, COFFERDAMS, DIVERSIONS, PUMPS ETC. AS NECESSARY TO KEEP THE WORK AREA'S FREE FROM WATER.
8. THE CONTRACTOR SHALL PROVIDE WARNING SIGNS AND BARRICADES AT LOCATIONS WHERE EXISTING SIDEWALK HAS BEEN REMOVED.
9. THE CONTRACTOR SHALL WORK TO MINIMIZE DAMAGE TO EXISTING PLANT MATERIALS BEHIND AND ABOVE PLANTER WALLS. WHOLESAL REMOVAL OF PLANTS WILL NOT BE ALLOWED. EXCESS DAMAGE TO PLANT MATERIALS WILL BE REPLACED BY CONTRACTOR.




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TX Firm Registration No.: BR940






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- PROTECT EXISTING AND HISTORIC SITE ELEMENTS TO REMAIN. CONTACT CITY PRIOR TO CONSTRUCTION ACTIVITIES.
- ALL PROPERTY BOUNDARIES SHALL BE LOCATED BY THE CITY. THE CONTRACTOR IS RESPONSIBLE FOR DELINEATING, MARKING, FLAGGING, AND MAINTAINING AS SUCH THROUGHOUT THE DURATION OF THE PROJECT.
- CLEARCUTTING PROHIBITED ~ CONTACT Karen Woodard, City Forester 214.709.3622 PRIOR TO ANY TREE REMOVAL.
- NEW STONE MASONRY / ROCKERY WALLS TO MATCH EXISTING MATERIALS. COLORS, CRAFTSMANSHIP ETC.
- CONTRACTOR TO REPAIR ANY DAMAGE TO EXISTING CONCRETE, UTILITIES, IRRIGATION, PLANTING AREAS OR TURF AREAS AT NO ADDITIONAL COST TO THE CITY.
- CONTRACTOR RESPONSIBLE FOR COMPLIANCE WITH LOCAL, STATE, AND FEDERAL REGULATIONS.
- ALL OTHER DISTURBED (staging, etc.)AREAS TO RECEIVE SOLID BERMUDA SOD AT NO ADDITIONAL COST TO THE OWNER.

Canterbury / Edgefield - Pathway Improvement



Kessler Steps

Dallas Park & Recreation



ISSUE DATE: 8/18/2017

REVISIONS

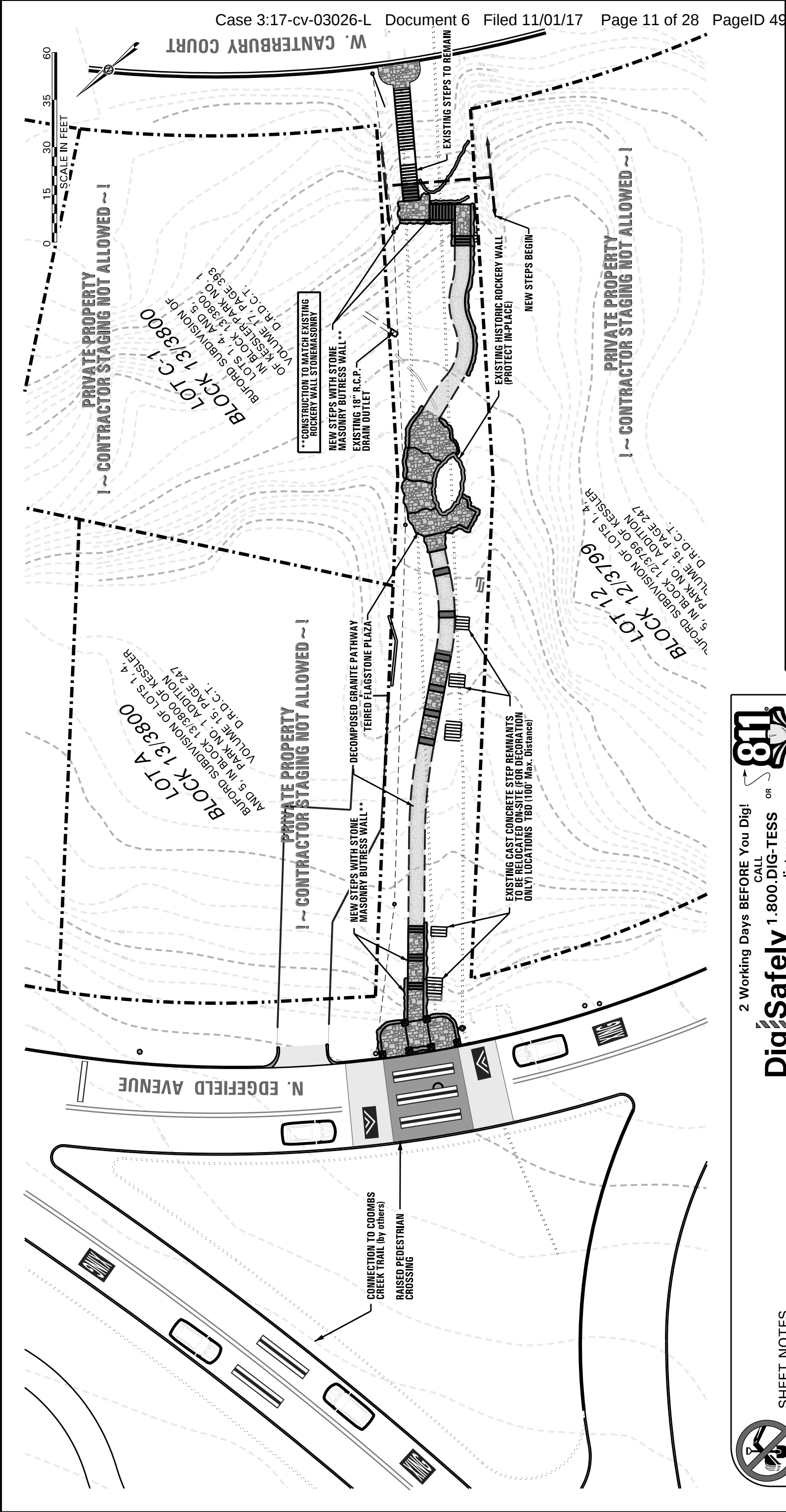
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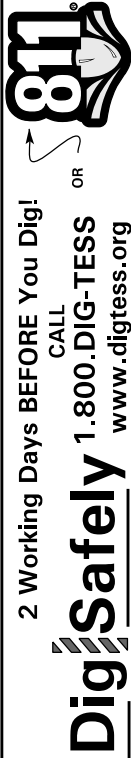

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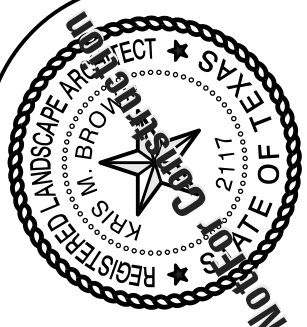
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Canterbury / Edgefield - Pathway Improvement



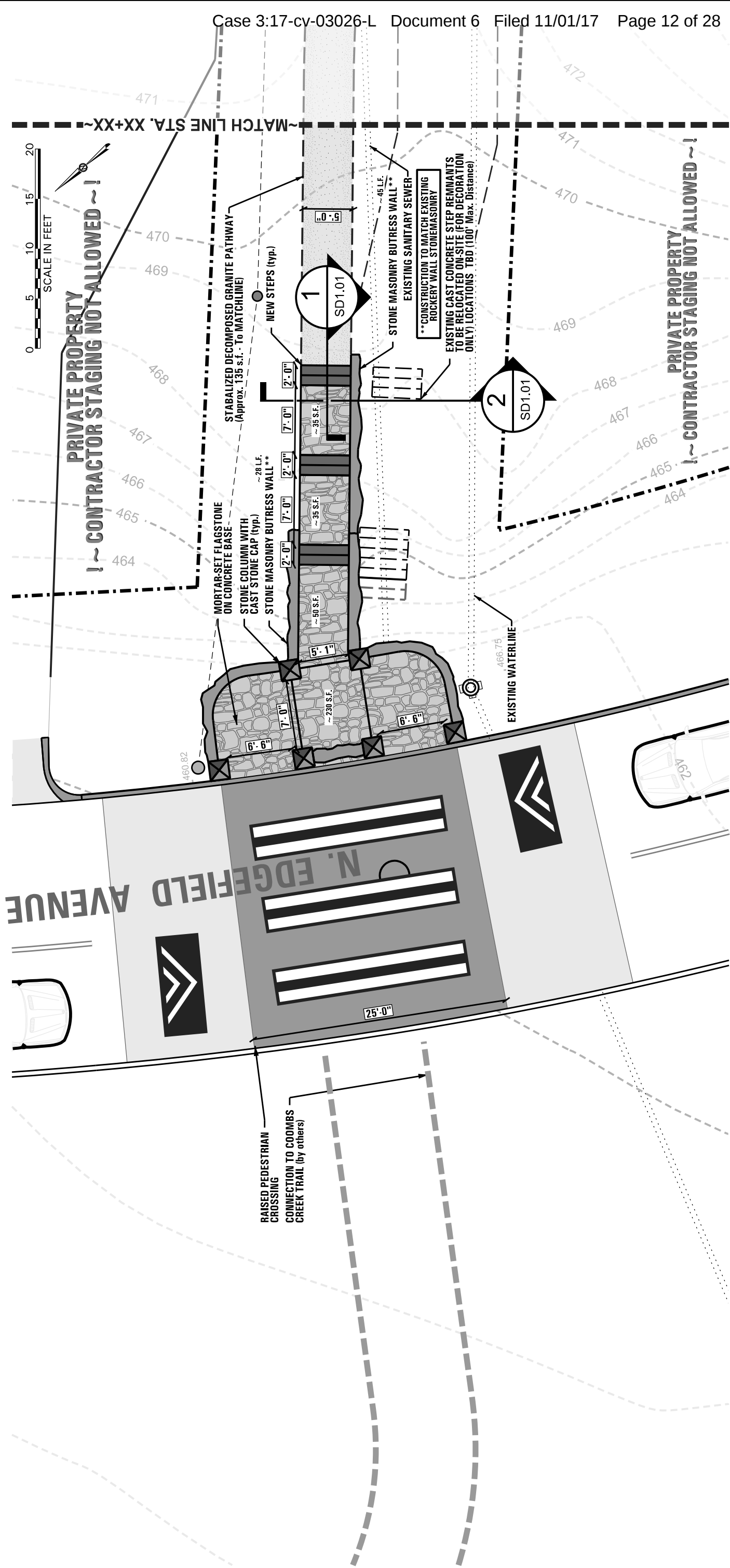
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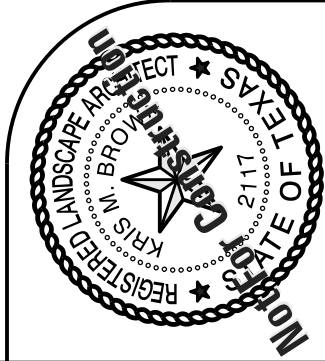
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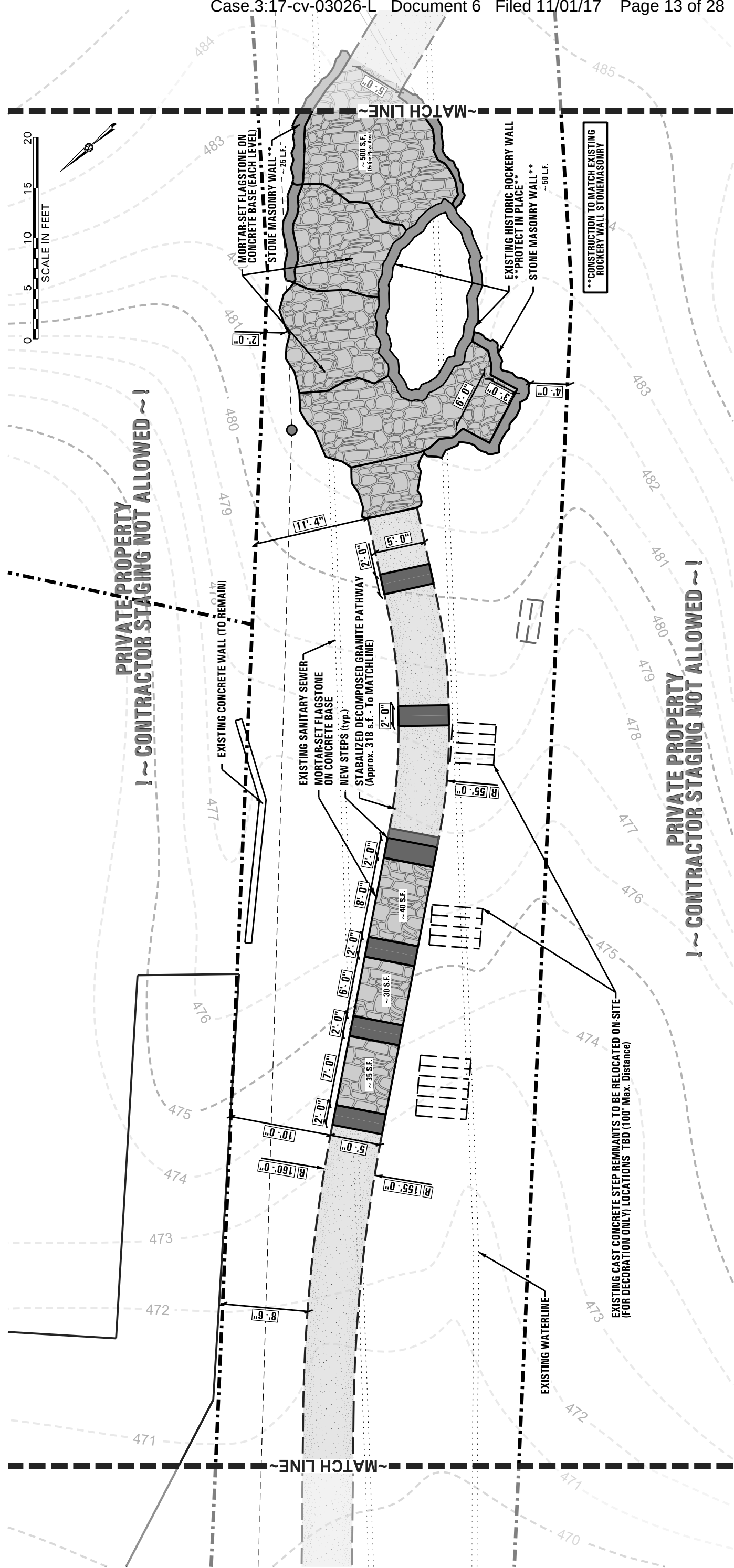


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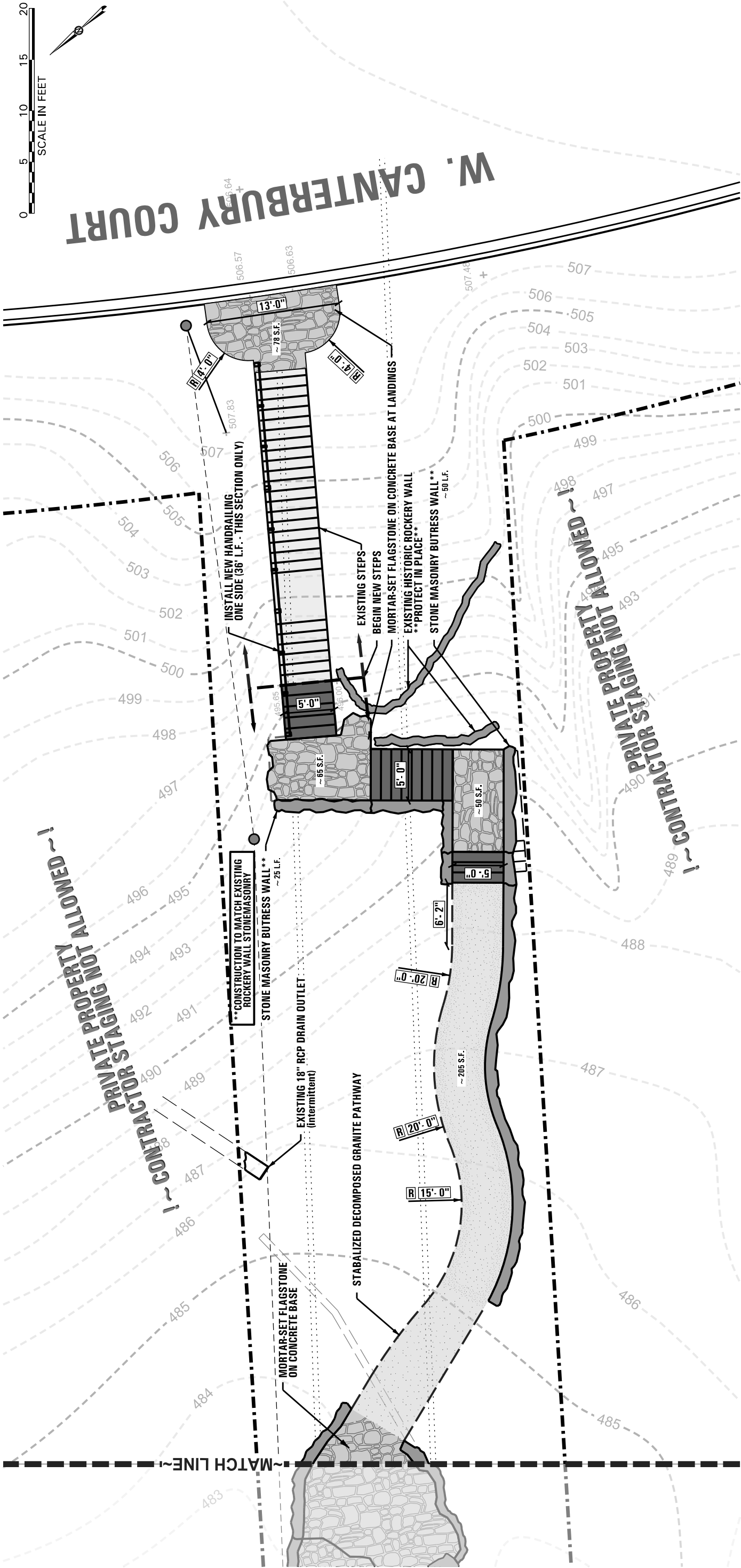
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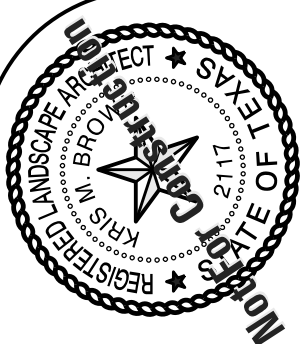
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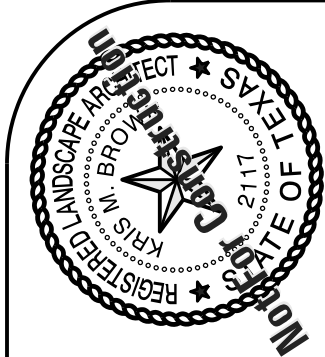
- la terra studio**
2109 Commerce ~ Dallas ~ Texas ~ 75201
214.749.0333

2 Working Days BEFORE You Dig!

CALL

Dia Safe | 1.800.DIG-TESS

www.digress.org



Canterbury / Edgefield - Pathway Improvement

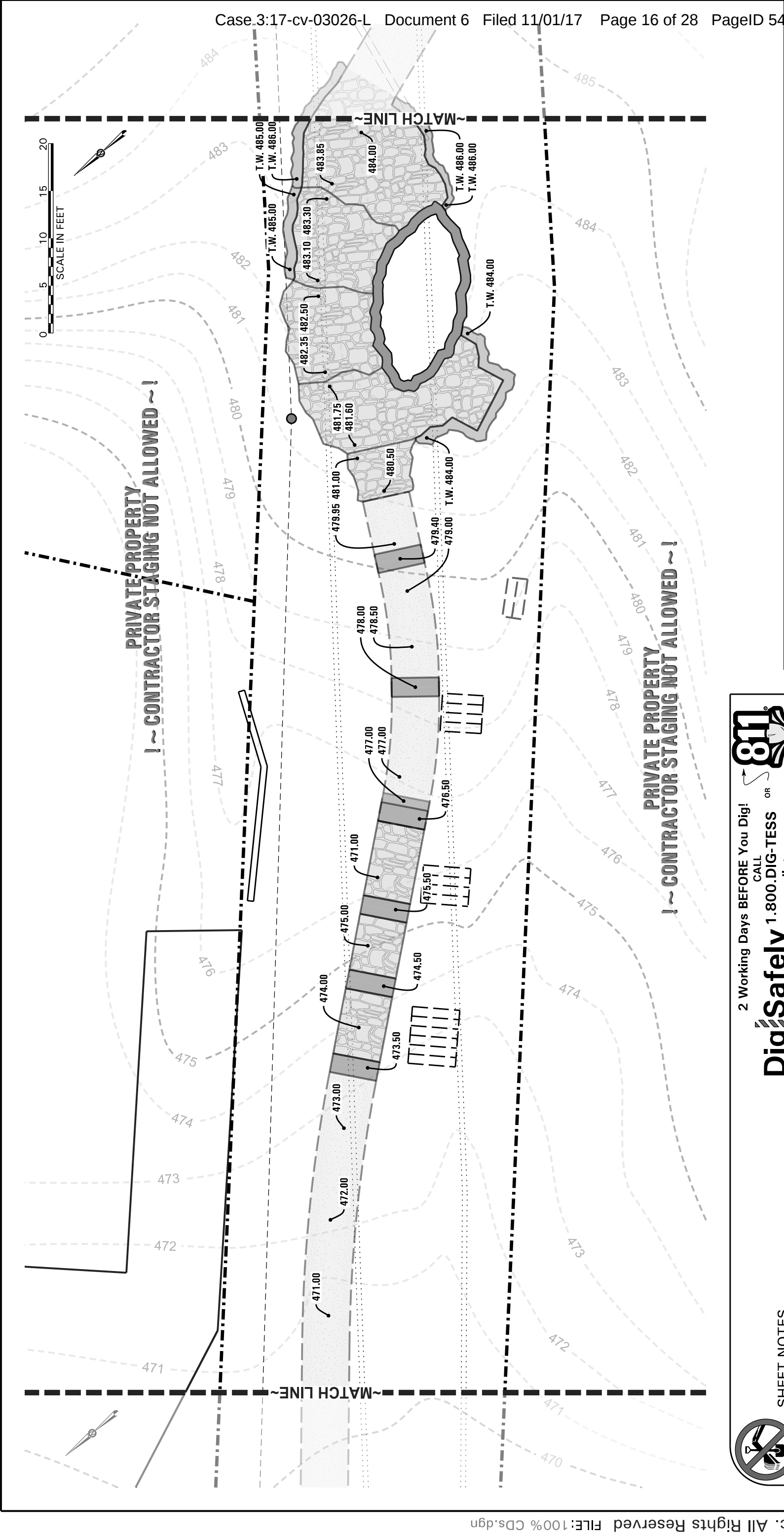



Dallas Park & Recreation

ISSUE DATE:	8/18/2017	DRAWN: Its	CHECKED: kb	~ Its ~ # 16022
REVISIONS		SHEET		

	GRADING PLAN
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GP2.01





2 Working Days BEFORE You Dig!
CALL 811 OR www.dig-1-800-dig-1-800.org


SHEET NOTES

- PROTECT EXISTING AND HISTORIC SITE ELEMENTS TO REMAIN. CONTACT CITY PRIOR TO CONSTRUCTION ACTIVITIES.
- ALL PROPERTY BOUNDARIES SHALL BE LOCATED BY THE CITY. THE CONTRACTOR IS RESPONSIBLE FOR DELINEATING, MARKING, FLAGGING, AND MAINTAINING AS SUCH THROUGHOUT THE DURATION OF THE PROJECT.
- CLEARCUTTING PROHIBITED ~ CONTACT Karen Woodard, City Forester 214.709.3622 PRIOR TO ANY TREE REMOVAL.
- NEW STONE MASONRY / ROCKERY WALLS TO MATCH EXISTING MATERIALS, COLORS, CRAFTSMANSHIP ETC.
- CONTRACTOR TO REPAIR ANY DAMAGE TO EXISTING CONCRETE, UTILITIES, IRRIGATION, PLANTING AREAS OR TURF AREAS AT NO ADDITIONAL COST TO THE CITY.
- CONTRACTOR RESPONSIBLE FOR COMPLIANCE WITH LOCAL, STATE, AND FEDERAL REGULATIONS.
- ALL OTHER DISTURBED (staging, etc.)AREAS TO RECEIVE SOLID BERMUDA SOD AT NO ADDITIONAL COST TO THE OWNER.

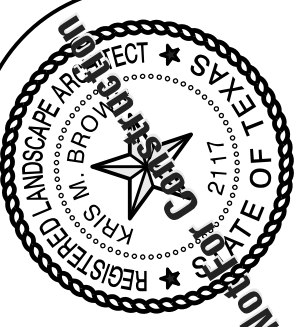


la terra studiosm
2109 Commerce ~ Dallas ~ Texas ~ 75201
214.749.0333

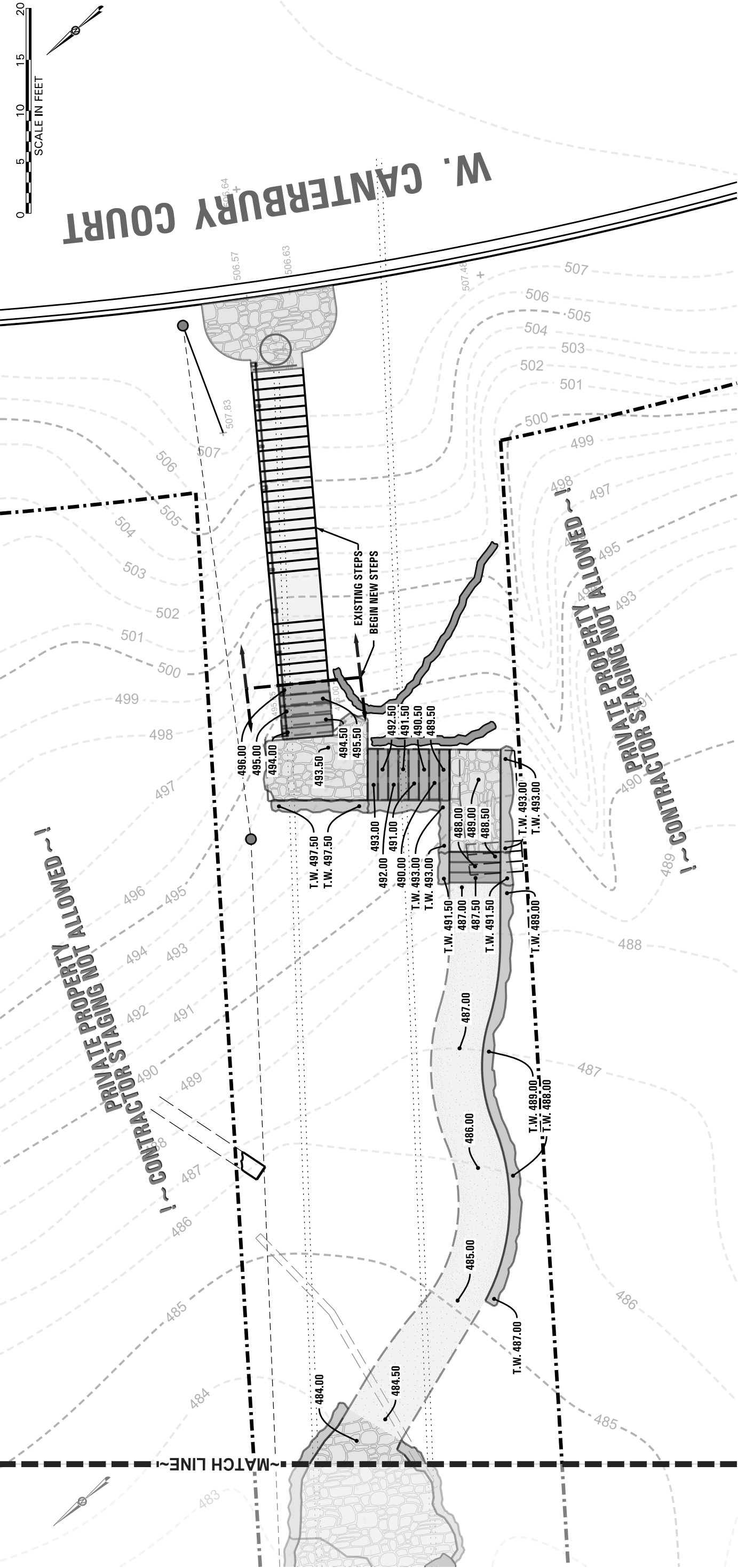
Canterbury / Edgefield - Pathway Improvement




Dallas Park & Recreation



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GRADING PLAN			
GP2.02			





2 Working Days BEFORE You Dig!

Dig Safely CALL 1.800.DIG-TESS OR www.digress.org

SHEET NOTES


- PROTECT EXISTING AND HISTORIC SITE ELEMENTS TO REMAIN. CONTACT CITY PRIOR TO CONSTRUCTION ACTIVITIES.
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Canterbury / Edgefield - Pathway Improvement



Kessler Steps

REGISTERED LANDSCAPE ARCHITECT
KRIS W. BROWN
2111
STATE OF TEXAS

Dallas Park & Recreation

ISSUE DATE: 8/18/2017	DRAWN: Its	CHECKED: kb	~ Its ~ # 16022
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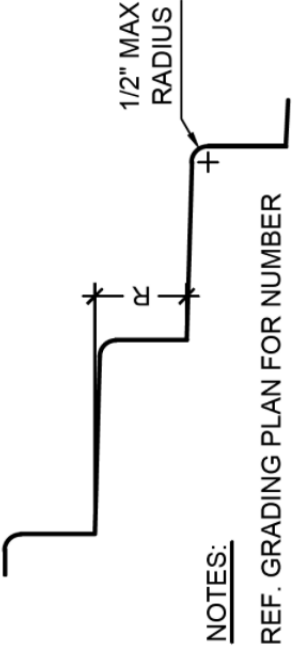
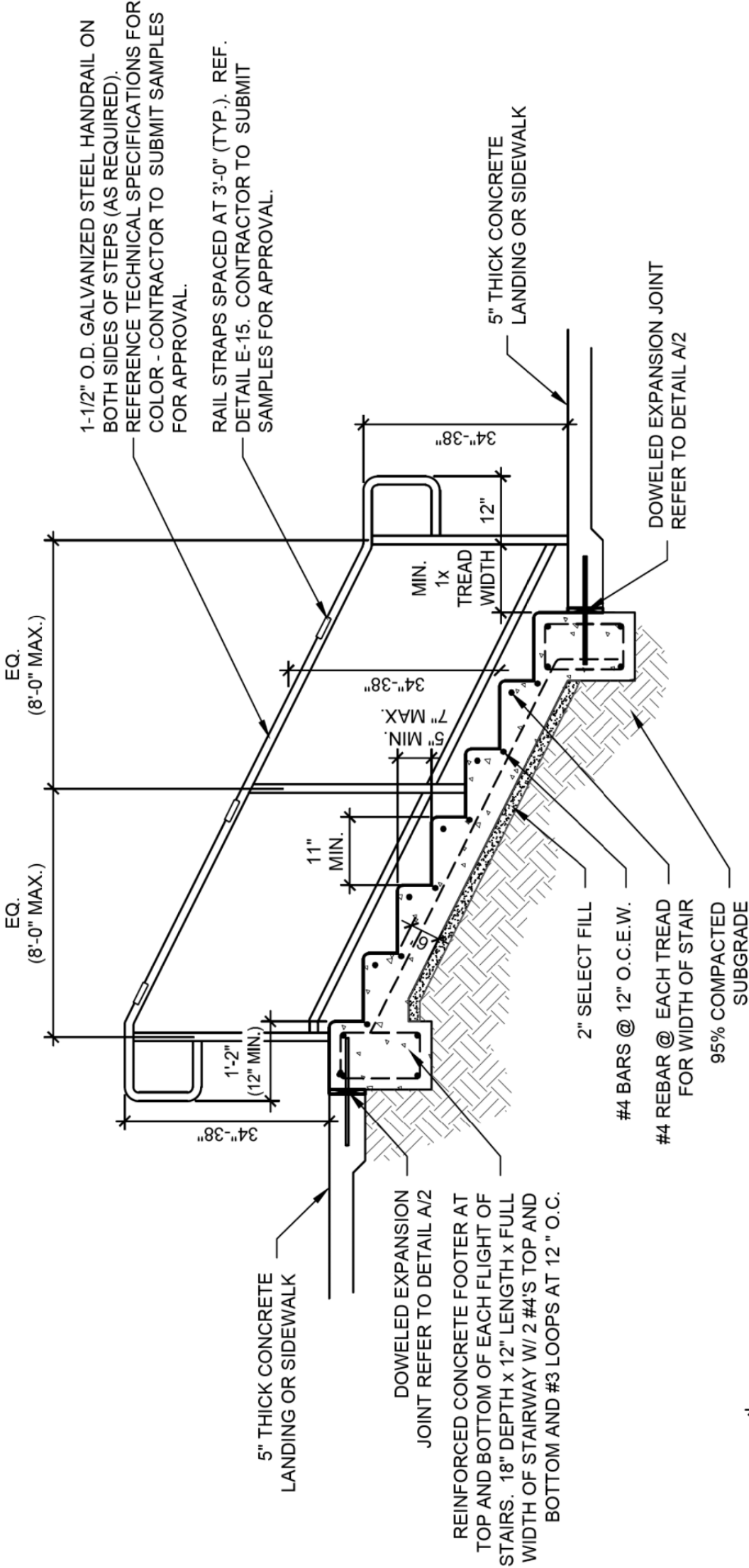


NOT TO SCALE

Canterbury / Edgefield - Pathway Improvement



issue date	
revisions	



GENERAL NOTES:

- REFER TO PLAN FOR STEP TREAD AND RISER QUANTITY AND DIMENSIONS.
- SLOPE TREAD @ 1.0% MAX FOR DRAINAGE.
- UNLESS NOTED OTHERWISE, STAIR FINISH SHALL BE A NON-SLIP HORIZONTAL BROOM FINISH.
- ALL DIMENSIONS AND MATERIALS FOR STAIRS SHALL COMPLY WITH SECTIONS 504 AND 505 OF THE TEXAS ACCESSIBILITY STANDARDS (MARCH 2012).
- POSTS SHALL BE SURFACE MOUNTED, CORED, SLEEVED OR SET IN POST FOOTERS - REFERENCE TECHNICAL SPECIFICATIONS AND/OR PROJECT SPECIFIC DETAIL FOR MOUNTING.

A

TYPICAL STAIR DETAILS

13

SCALE: 1/2"= 1'-0"



Photo 1. Forms for steps, no ramp or other provision for accessible route.

Photo 2. Forms for steps, no ramp or other provision for accessible route



PERSON FILING FORM

Name: kris brown Phone: 214-749-0333
 Person Address: 2700 Swiss Avenue STE 100, dallas, tx 75204
 Ras Number: 309

Project Name: The Kessler Steps
 Project Address: Canterbury/Edgefield Pathway Improvement
 1350-1398 N. Edgefield Avenue
 Dallas, TX 75208 County: Dallas

TENANT

Contact Name: Phone:
 Contact Address:

BUILDING/FACILITY Name: Canterbury/Edgefield Pathway Improvement
 FACILITY Owner: City of Dallas Phone: 214-670-4105
 Owner Address: 1500 Marilla Street 6-FS, Dallas, TX 75201
 Contact Name: Richard Stauffer, P.E. Phone:
 Contact Address:

DESIGN FIRM Name: la terra studio? Phone: 214-749-0333
 Firm Address: 2700 Swiss Avenue, Dallas, TX 75204
 Designer Name: Kristopher M. Brown
 Type of License: Landscape Architect License Number: 2117

PROJECT DESCRIPTION

Start Date: 01/2018 Completion date: 06/2018 Estimated Cost: \$150,000.00
 Type of Work: Renovation/Alteration
 Type of Funds: This project involves public funds, public land, or is a state lease.
 Are the private funds provided by a tenant? No
 State Lease No. :

Scope of Work: Renovation / Preservation of an existing pathway consisting of historically significant stone steps connecting W.Canterbury Ct. and N. Edgefield Avenue, A.K.A. "The Kessler Steps". The project area conveys along a 30' strip of public right of-way with an approximate (projected) distance of 400 linear feet.
 Does this building(s) have more than one level? Not a building
 Are there any elevators, escalators, or platform lifts in this building? Not a building
 Are there any boiler in this building? Not a building

This AB Project registration Confirmation Page, construction documents, and applicable fees must be submitted in accordance with the Texas Administrative Code Chapter 68, [Rule 68.51](#).

If TDLR will be performing the review or inspection services, see [Rule 68.80](#).

If a RAS will be performing the review or inspection services, please contact the RAS as they set and collect their own fees, see [Rule 68.75](#).

In accordance with [Rule 68.52](#), the owner of a building or facility must also obtain an inspection from the department or a registered accessibility specialist not later than the first anniversary of the completion of construction. Request for inspection shall be made by completing the Request for Inspection form and submitting it no later than 30 calendar days after the completion of construction.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

DON'T DISMYABILITIES, INC.,

Plaintiff,

v.

THE CITY OF DALLAS

Defendant.

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CIVIL ACTION NO.

**CLASS ACTION COMPLAINT OF
DISABILITY ACCOMMODATIONS
DISCRIMINATION**

AFFIDAVIT OF FACT OF

FRED DWAIN CAWYER AIA, RAS, NCARB, APA

BEFORE ME, the undersigned authority, on this day personally appeared Fred Dwain Cawyer, who, after being by me duly sworn, deposed and stated the following:

1. My name is Fred Dwain Cawyer,, I am over the age of eighteen (18) years of age, competent to make this affidavit and have personal knowledge of each of the matters stated herein and they are true and correct.
2. I am a Registered Accessibility Specialist, licensed by the Texas Department of Licensing and Regulation to review architects' buildings and facilities construction documents covered by the Architectural Barriers Act to determine compliance with the Texas Accessibility Standards and to physically inspect the subsequent construction of privately funded buildings and facilities having an estimated construction cost of \$50,000 or more to determine construction compliance with the Texas Accessibility Standards within one year of the construction completion date.
3. I have a Bachelor of Science in Industrial Management from Abilene Christian University, a Bachelor of Environmental Design from Texas A&M University, and a Master of Architecture from Texas A&M University. My resume is attached hereto as Exhibit A and the statements therein are from my personal knowledge and are true and correct.
4. I was retained by Don't DisMyAbilities, Inc. in this case to assess the compliance of the City of Dallas with Title II of the Americans with Disabilities Act and the Texas

AFFIDAVIT OF FACT OF

FRED DWAIN CAWYER AIA, RAS, NCARB, APA

Page 1

Exhibit E

Architectural Barriers Act.

5. I have reviewed the Kessler Steps Pathway Improvement Plan attached to the Complaint in this case as Exhibit B and have personally reviewed the Pathway site and find that it does not meet the accessibility standards of either the Americans with Disabilities Act Accessibility Guidelines or the Texas Accessibility Standards and is not readily accessible to and usable by individuals with disabilities.
6. The standards for an accessible route are set out in ADAAG/TAS §402.2 Components, “Accessible routes shall consist of one or more of the following components: walking surfaces with a running slope not steeper than 1:20, doorways, ramps, curb ramps excluding the flared sides, elevators, and platform lifts. All components of an accessible route shall comply with the applicable requirements of Chapter 4.” And the Kessler Steps Pathway Improvement Plan does not meet these standards.
7. The construction shown in photos 1 and 2 of Exhibit C of Plaintiffs Original Complaint do not meet the standards for an accessible route are set out in ADAAG/TAS §402.2.
8. The Texas Architectural Barrier Act requires that when a property owner engages in new construction or alters a covered facility and the cost of the construction is over \$50,000, it must submit the construction plans to the Texas Department of Licensing and Regulation for review and approval before the beginning of construction.
9. Based on my review of the Kessler Steps Pathway Improvement Plan, it is my opinion that facility construction plans fails to comply with the Americans with Disabilities Act Accessibility Guidelines or the Texas Architectural Barriers Act and the facility, if constructed to the plans would not comply with either law.

FURTHER AFFIANT SAITH NOT

VERIFICATION

STATE OF TEXAS

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COUNTY OF DALLAS

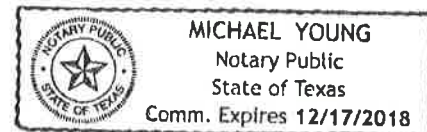
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BEFORE ME, the undersigned authority, on this day personally appeared Fred Dwain Cawyer, who after having been duly sworn, stated that he has read the above and foregoing, that the statements therein are within his personal knowledge, and that they are true and correct.


Affiant

SWORN TO AND SUBSCRIBED before me by the said Fred Dwain Cawyer, on this 31st day of October 2017 to certify which, witness my hand and seal of office.


NOTARY PUBLIC FOR THE
STATE OF TEXAS



Fred Dwain Cawyer AIA, RAS, NCARB, APA
“Universal Design” Accessibility Consultant

EDUCATION

Bachelor of Science - Industrial Management

Abilene Christian University (ACU) / Abilene, Texas – 1975

A cross-disciplined program dealing with both Business Administration and Industrial Technology. Areas of study included: Accounting, Economics, Business Law, Financial Management; and, Architectural, Structural, Mechanical / Electrical / Plumbing Systems drawing documentation, Crafts, Power Mechanics, Welding, and Woodworking.

Bachelor of Environmental Design -

Texas A&M University (TAMU) / College Station, Texas - 1978

Undergraduate - Liberal Arts / “Pre-Architecture” Program

Master of Architecture - (Simultaneous degrees)

Texas A&M University (TAMU) / College Station, Texas - 1978

Graduate School: “Building Design” Option, with an emphasis in Healthcare planning and design.

EXPERIENCE

A. Carl Preston AIA - Architect - 1975

Abilene, Texas (Summer before TAMU studies)

Position - Introduction to architectural practice prior to graduate school at TAMU.

HKS, INC. Architects / Engineers / Planners

Dallas, Texas - January 1979 to March 1991

Position - Began professional career as an “architect-intern” and evolved into Architectural Job Captain, Project Architect, and Associate / Project Manager positions of responsibility - specializing in Project Management and Construction Administration of large scale commercial architecture.

CAWYER+ASSOCIATES / ARCHITECTS

Garland, Texas - March 1991 to September 1993

Position - Founder

Fred Dwain Cawyer AIA, RAS, NCARB, APA
“Universal Design” Accessibility Consultant

EXPERIENCE – Continued:

The Associates Corporation of North America (Now CitiCorp)

Irving, Texas - September 1993 to October 1994

Position - Senior Real Estate Director, challenged with the real estate portfolio development and management of over 100 commercial leasespaces located throughout the United States and Canada. The Associates was a \$30 billion financial services company owned by the Ford Motor Company during tenure.

C+S/A, Ltd. – Cawyer + Stephens / Architects

Mesquite, Texas - October 1994 to February 2005

Position - Founding Principal of a full-service Architectural design firm specializing in Programming, Master Site Development Planning and Architectural design & documentation and construction administration consulting services.

CSM/A, Ltd. – CawyerStephensMarks / Architects

Mesquite, Texas - October 1994 to July 2006

Position - Founding Principal of a full-service Architectural design firm specializing in healthcare architecture - programming, master site development planning and architectural design & documentation and construction administration consulting services.

ARS - Accessibility Resource Specialists, PLLC

Mesquite, Texas - 1995 to present

Position - Founding Principal - Registered Accessibility Specialists (RAS #0086) specializing in accessibility consulting, as certified by the Texas Department of Licensing and Regulation to provide Texas Accessibility Standards (TAS) Plan Reviews and on-site Inspections on behalf of the State of Texas.

Cawyer & Associates Consulting, LLC

Mesquite, Texas - 2007 to present

Position – State of Texas HUB – Historically Underutilized Business Certificate #120578894200 - Specializing in Fair Housing Act (FHA) multifamily residential and commercial accessibility consulting, as certified by the Texas Department of Licensing and Regulation to provide Texas Accessibility Standards (TAS) Plan Reviews and on-site Inspections on behalf of the State of Texas.

Fred Dwain Cawyer AIA, RAS, NCARB, APA
“Universal Design” Accessibility Consultant

REGISTRATIONS

Licensed Architect & Interior Designer

Architect - State of Florida - No. AR 91417 (currently inactive)

Architect - State of Texas - No. 08209

Interior Designer - State of Texas - No. 00614

National Council of Architectural Registration Boards:

Certificate Holder No. 26338 (*Allows reciprocal architectural license with other State Boards*)

HONORS

Student Achievements:

Sigma Tau Epsilon / Honorary Industrial Technology Organization @ ACU

Tau Sigma Delta / Honorary Architectural Design Organization @ TAMU

Alpha Rho Chi Metal / National Professional Organization of Architectural Students - ***1979 Metal award recipient at Texas A&M University for “Outstanding Leadership, Service and Merit”.***

Local Professional Achievements:

Member and / or Former Chairman

Dallas Chapter / American Institute of Architects (D/AIA)

Committees:

Interior Architecture – Founder & Former Chairman

Architecture for Health – Former Member

Design Awards Program – Former Chairman

Honor Awards – Former Member

Leadership Dallas / AIA – Participant & Co-Chair

Dallas / AIA Foundation – Former Board Member

Small Firm Roundtable - Member

Commissioner:

Environment and Design Commission

Community Services Commission

Professional Practice Commission

Former Member - Appointed by the Dallas County Commissioners Court to participate as a Member of the **Dallas County Project Management Advisory Committee**

Selected by **Dallas / AIA** as an Outstanding **Young Architect of the Year – 1987**

Fred Dwain Cawyer AIA, RAS, NCARB, APA
“Universal Design” Accessibility Consultant

HONORS – Continued: *State Level Involvement - Professional Achievements:*
 Member and / or Former Chairman -
 Former Chairman of Texas Society of Architects (TSA) -
 Student Liaison Committee - Initiated TSA “Statewide
 Student Design Competition” @ TSA Annual Conventions

Outstanding Alumni Award - Industrial Technology Department –
Abilene Christian University - 1992.

Former Member and Chairman – City of Garland MAIN STREET
(Texas Historical Commission) – “DESIGN
COMMITTEE”

Former Member – President’s Council of Christian Care Centers

Past President (2004) / Former Member – OLD TOWN
MESQUITE – Downtown Mesquite - Main Street
Association

Former Member - CITY OF MESQUITE - URBAN DESIGN
TASK FORCE

MEMBERSHIPS *Dallas Chapter / American Institute of Architects (D/AIA)*
 Texas Society of Architects (TAS)
 American Institute of Architects (National AIA)
 Preservation Dallas & Dallas Architectural Forum
 2010 President, Charter Member & Board of Director of TRASA -
 Texas Registered Accessibility Specialists Association
 Coalition of Texans with Disabilities (CTD)

INTERESTS Church / Family Activities; Former Assistant Scoutmaster - Boy
 Scouts of America; Sailing; Golf; Tennis; Racquetball; and, Music;
 and, Chairman of the Harborview Homeowners Association –
 Architectural Control Committee

REFERENCES &
PORTFOLIO *Detailed Professional and Client references available upon request.*